

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

Item #10 (Rev. 1)

ID #14165

RESOLUTION E-4730

August 27, 2015

R E S O L U T I O N

Resolution E-4730. Amending Southern California Edison's Electric Rule 23—re: returning Community Choice Aggregation customer Stay Requirements, to conform with Public Utilities Code § 366.2 (c)(13).

PROPOSED OUTCOME:

- Southern California Edison is hereby directed to submit a supplement to AL 3113-E which amends Electric Rule 23 L to conform with Public Utilities Code § 366.2 (c)(13), such that a returning Community Choice Aggregation customer is subject to no more than a twelve-month stay requirement with the utility, regardless of any applicable Transitional Bundled Service period.

SAFETY CONSIDERATIONS:

- There is no impact on safety.

ESTIMATED COST:

- There is no cost impact.

By Advice Letter 3113-E Filed on October 7, 2014.

SUMMARY

This Resolution directs Southern California Edison (SCE) to submit a modification to its Advice Letter (AL) 3113-E. This supplement should bring SCE's Electric Rule 23 L into conformity with the twelve-month stay requirement prescribed in Public Utilities Code § 366.2(c)(13) for former Community Choice Aggregation (CCA) customers, regardless of any applicable Transitional Bundled Service (TBS) period.

BACKGROUND

Under California law, bundled electric service customers of Investor-Owned Utilities (IOU), such as SCE, have the option in certain circumstances, to purchase electricity from a third-party such as a Community Choice Aggregator (CCA) or Electric Services Provider (ESP) and have it delivered by the local IOU.

If a customer takes electric service from an ESP, that customer is known as a Direct Access (DA) customer. If a customer takes electric service from a CCA, that customer is known as a CCA customer. Customers who stay with the utility for both electricity generation and delivery are generally called bundled service customers. Customers who buy electricity procured by CCAs or ESPs are generally called departing load customers.

Some of the customers who depart the IOU for service from a CCA or an ESP, sometimes return to the IOU for bundled electric service. When that happens, returning customers are required to stay with bundled utility service for a minimum period of time. The rationale is that this “minimum stay requirement” would minimize the number of customers that switch from bundled utility service to a CCA based on temporary electricity rate differences. The minimum stay requirement also enables the utilities to plan their procurement and helps with maintaining bundled utility ratepayer financial indifference to the returning and departing customers.

CPUC Direct Access Decision D.11-12-018 reduced the stay requirement for returning Direct Access customers from thirty-six months to eighteen months.

To address various reforms with the DA program, the California Public Utilities Commission (“CPUC” or “Commission”) issued Decision D.11-12-018 in December 2011. Among other things, this Decision reduced the minimum stay requirement for returning Direct Access customers from thirty-six months to eighteen months.¹

However, and importantly, the Commission retained the six-month advance notice requirement for DA customers to return to IOU service or for bundled

¹ D.11-12-018, at *115, Ordering ¶ 10.

customers departing IOU service to be served by an ESP.² The Decision also reiterated that for DA customers the “minimum stay period commences when a returning DA customer begins paying bundled service rates.”³

When “a DA customer returns with no notice, and is on the Transitional Bundled Service (TBS) rate for six months, the customer’s minimum stay period commences after the six months TBS rate period has concluded and it starts paying the bundled service rate.”⁴ TBS rates are typically ‘spot-market’ rates for electricity. TBS rates can fluctuate significantly and are often higher than bundled service rates.

Senate Bill 790 and P.U. Code § 366.2 (c)(13) reduced the minimum stay requirement for CCA customers returning to the utility to 12 months.

As the CPUC was revising the DA program rules, the California legislature passed Senate Bill (SB) 790 (Leno 2011), which, after being signed by the Governor, took effect on January 1, 2012, several weeks after the CPUC’s above-mentioned D.11-12-018. Among other things, the law amended Public Utilities Code § 366.2 (c)(13), adding the italicized portion below:

...[CCA] [c]ustomers that return to the electrical corporation for procurement services shall be subject to the *same terms and conditions as are applicable to other returning direct access customers* from the same class, as determined by the commission, as authorized by the commission pursuant to this code or any other provision of law, *except that those customers shall be subject to no more than a 12-month stay requirement with the electrical corporation...*⁵

² D.11-12-018, at *115, Ordering ¶ 11.

³ D.11-12-018, at *49, citing D.03-05-034.

⁴ D.11-12-018, at *49.

⁵ Pub. Util. Code § 366.2 (c)(13) (emphasis added).

The Commission's Energy Division sent a notice to Southern California Edison (SCE), San Diego Gas & Electric Company (SDG&E), and Pacific Gas & Electric Company (PG&E), instructing each utility to correct its tariffs such that a returning CCA customer would be subject to no more than a twelve-month stay requirement.

In January 2015, Energy Division sent notice⁶ to Southern California Edison (SCE), San Diego Gas & Electric Company (SDG&E), and Pacific Gas & Electric Company (PG&E), instructing them to correct their tariffs such that a returning CCA customer would be subject to no more than a twelve-month stay requirement, notwithstanding any potential TBS period, so as to conform the tariff sheets to the change in the minimum stay requirement contained in SB 790.

PG&E complied with this Notice and amended its tariff via advice letter.⁷ SDG&E initially objected to the Notice along with SCE. Then, Energy Division sent an Affirmation of its Notice to Correct Tariff to both SCE and SDG&E. Following the Affirmation of its Notice to Correct Tariff, SDG&E submitted an advice letter correcting its tariff.⁸ Throughout the process, SCE has maintained its position that the minimum stay requirement period does not commence for CCA customers until the completion of the six-month notice period, which can be spent either at the CCA, or on TBS rates with the IOU.

As it currently stands in SCE territory, a CCA customer who returns to bundled service with SCE will be subject to either a six-month waiting period during which they must remain with the CCA before returning to bundled service; or the customer can return to SCE's TBS rate for six months before returning to SCE bundled service, at which point the stay requirement commences. This essentially results in an effective *eighteen-month* stay period with SCE, in contravention of Pub. Util. Code § 366.2 (c)(13).

⁶ SCE received a letter instructing it to supplement its AL 3113-E. SDG&E and PG&E both received Notices to Correct Tariff, pursuant to General Order 96-B, § 8.3.

⁷ PG&E AL 4586-E was approved by Energy Division.

⁸ SDG&E AL 2754-E was approved by Energy Division.

The Power Charge Indifference Adjustment (PCIA) is a non-bypassable charge, or credit, which customers departing bundled utility service pay, or receive, to make the bundled ratepayers financially ‘indifferent’ to the fact that those customers have departed.

The PCIA is designed to ensure that customers remaining with the utility will not end up paying cost of electricity incurred by the utility on behalf of customers who have departed. When, and if, a customer returns to IOU service, the customer pays the PCIA charge (or receives the credit) and the transitional bundled service (TBS) rate for the six months of TBS service, because the IOU has not yet had sufficient time or notice to begin procuring on that customer’s behalf once again.

NOTICE

Notice of AL 3113-E was made by publication in the Commission’s Daily Calendar. SCE states that a copy of the Advice Letter was mailed and distributed in accordance with Section 4 of General Order 96-B.

PROTESTS

Advice Letter AL 3113-E was not protested. However, on February 13, 2015, the City of Lancaster wrote to Energy Division, stating that it “does not oppose the changes being proposed by SCE to Rule 23, with the exception of section 23, L.3.c, which we support the CPUC[’s] recommended changes providing clarification that any stay requirement shall be no more than 12 months, regardless of the TBS...” The City of Lancaster operates Lancaster Choice Energy (the first, and so far, only CCA in SCE service territory).

The Energy Division also responded to Advice Letter AL 3113-E as described above.

DISCUSSION

Energy Division has reviewed SCE AL 3113-E, D.11-12-018, the Public Utilities Code § 366.2, comments from Lancaster Choice Energy, Marin Clean Energy, SCE, SDG&E, and PG&E.

The plain language of the Public Utilities Code requires that returning CCA customers be subject to “no more than a 12-month stay requirement.”

As stated above, it is clear from the plain language of the statute, as amended by SB 790, the legislature intended to change the stay requirement from thirty-six months to twelve months for CCA customers. The legislature likely could not have predicted or did not appreciate that the Commission was in the midst of changing the minimum stay requirement. Even if the legislature was aware that the CPUC was in the process of revising the stay requirement, it could not have predicted exactly what time limit the CPUC would eventually impose. Instead, the legislature took the pro-active step of shortening the stay requirement, specifically for CCAs, from thirty-six to twelve months. Despite, the various arguments made about what is said in D.11-12-018, California statute controls when there is a direct conflict between a statute and CPUC decisions.

Non-bypassable charges (or credits), like the PCIA, minimize the risk of customers switching from bundled service to a CCA service based on temporary price differences, by keeping bundled customers financially indifferent to customers leaving and returning to bundled service.

Since a formerly-CCA customer will have to take the TBS rates for the first six months after returning to the IOU, and TBS rates are ‘spot market’ rates, the risk of customers switching from bundled to a CCA based service based on temporary price differences will be minimized. It is highly unlikely that an individual customer would have enough insight or foresight to predict what relative electricity prices will be in six months’ time, such that they will repeatedly switch back and forth between IOUs and CCAs, while searching for a better price. Furthermore, the CCAs and IOUs, as direct competitors, have historically had relatively similar rates in order to stay cost-competitive with one another.

Non-bypassable Charges (or credits), such as the Power Charge Indifference Adjustment (PCIA), as calculated by the CPUC, are designed specifically to ensure bundled customers remain financially indifferent to the fact that some customers will depart bundled service and purchase procurement services from a CCA or ESP.

Similarly, when those departed customers return to bundled service, the bundled customers will remain indifferent because the returning customers still pay the PCIA for the first six months while they are on TBS. When the customer finally

returns to bundled service, the PCIA portion of their bill is not charged because the customer is no longer departed.

SDG&E and PG&E have both agreed to modify their CCA tariffs consistent with amended Public Utilities Code § 366.2 (c)(13), in the manner requested by Energy Division.

It is important to set in place uniform CCA program rules wherever possible. As discussed above, SDG&E and PG&E have already both agreed to modify their CCA tariffs in a manner such that a CCA customer who returns to bundled service will be subject to no more than a twelve-month stay requirement notwithstanding any TBS period.

In accordance with Energy Division's Notice to Correct Tariff, SDG&E recently filed AL 2754-E, which amends its Electric Rule 27, Community Choice Aggregation Rules, to state in relevant part, "[i]n the event a customer receives service under TBS during the six-month advance notice period, the time served under TBS shall apply toward the one-year BPS commitment."

Similarly, and also in response to Energy Division's Notice to Correct Tariff, PG&E's AL 4586-E amends its Electric Rule 23, Community Choice Aggregation Service, to state in relevant part, "[i]n the event a customer receives service under TBS during the six-month advance notice period, the time served under TBS shall apply toward the one-year BPS commitment."

SCE is directed to correct its tariff such that a returning CCA customer would be subject to no more than a twelve-month stay requirement, notwithstanding any potential TBS period so as to conform its tariff sheets to the change in the minimum stay requirement contained in SB 790.

SCE argues that the stay requirement period does not commence for CCA customers until the completion of the six-month notice period, which can be spent either at the CCA, or on TBS rates with the IOU. We believe, SCE's interpretation of the amended Public Utilities Code § 366.2 (c)(13) is in error and SCE needs to conform its tariff sheets to the change in the minimum stay requirement contained in SB 790 as instructed by the Energy Division in its Notice to Correct Tariffs, sent January 22, 2015 .

COMMENTS

Public Utilities Code § 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived or reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

Southern California Edison (SCE) filed comments opposing the result of this Resolution. Lancaster Choice Energy (LCE) filed comments supporting the result of this Resolution. Both parties re-iterated largely the same points they made in the correspondence surrounding the Notice to Correct Tariff. Primarily, SCE argues that the Draft Resolution erred in its interpretation of SB 790's interaction with Commission Decision. SCE points to SB 790's legislative history, and offers an alternative outcome that eliminates the TBS altogether. Commission staff has reviewed, analyzed, and weighed these arguments. After reviewing the parties' comments, and relevant precedents anew, the outcome of this Resolution remains unchanged.

FINDINGS

1. SB 790, signed into law in late 2011, took effect January 1, 2012.
2. SB 790 amended Public Utilities Code § 366.2 (c)(13), adding the italicized portion below:

[CCA] [c]ustomers that return to the electrical corporation for procurement services shall be subject to the same terms and conditions as are applicable to other returning direct access customers from the same class, as determined by the commission, as authorized by the commission pursuant to this code or any other provision of law, *except that those customers shall be subject to no more than a 12-month stay requirement with the electrical corporation.*

3. The statutory language in Finding 2 above controls over any seemingly conflicting language found in Commission Decision.

4. Transitional Bundled Service, or TBS, remains a viable option for customers who wish to return to bundled utility service, but do not wish to spend their six-month notice requirement with the CCA.
5. However, if a customer elects to spend the six-month notice requirement period on TBS rather than with the CCA, that TBS period shall count toward the twelve-month stay requirement.
6. Non-bypassable Charges (or credits), administered by the CPUC, particularly the Power Charge Indifference Adjustment, will minimize customers switching from bundled to a CCA based service based on temporary price differences and ensure that bundled ratepayers remain financially indifferent to CCA customers departing from and returning to bundled service.
7. In the interest of the uniform implementation of CCA program rules statewide, SDG&E's AL 2754-E and PG&E's AL 4586-E provide useful models for how to implement the changes ordered by this Resolution.

THEREFORE IT IS ORDERED THAT:

1. Southern California Edison is hereby ordered to submit a supplement to AL 3113-E which amends its Electric Rule 23 L to conform with Public Utilities Code § 366.2 (c)(13), such that a former Community Choice Aggregation customer is subject to more than a twelve-month stay requirement with the utility, regardless of any applicable Transitional Bundled Service period.
2. In the event a former Community Choice Aggregation customer returns to bundled utility service and opts to receive service under Transitional Bundled Service during the six-month advance notice period, the time served under Transitional Bundled Service shall apply toward the one-year Bundled Portfolio Service stay requirement.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on August 27, 2015; the following Commissioners voting favorably thereon:

TIMOTHY J. SULLIVAN
Executive Director